VIRGINIA LAW REGISTER

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All Communications should be addressed to the PUBLISHERS.

114 Virginia is before us through the courtesy of the Michie Company. One hundred and seven cases are reported in this volume, of which ten are criminal. Of the ninety-seven civil cases fifty-seven are affirmed and thirty-seven reversed. The writ is dismissed in two cases and in one, a habeas corpus case, the appeal is dismissed. In the criminal cases four are affirmed, and one appeal, in the celebrated Allen case, refused, which is equivalent to five affirmations. Five are reversed. The number of affirmations as to reversals is greater in this volume than in any we have heretofore reviewed.

114 Virginia.

We find two errors which we suppose should be charged to the printer but to which we think it well to call the attention of the profession. In the case of Danville *v.* Danville Railway & Electric Company on page 382 the decision is marked as "affirmed"—on page 389 it is narked as "reversed," which is correct. On page 619, Miller *v.* Smith, the case is marked as "reversed" and "affirmed" on the same page; whereas on page 629 it is marked "reversed," which is correct. We suggest that readers change "affirmed" on page 382 to "reversed" and strike out "affirmed" on page 619.

There is only one dissenting opinion in the volume, though Judge Keith's concurring opinion in Patterson's case on page 89, we think, is a correct statement of the law in regard to dying declarations and as it differs widely from the opinion of the court we suppose it ought to be really taken as a dissenting opinion in part, though the learned President concurs in the results. It is very apparent from reading the opinion of the majority that the reversal was proper but certainly the opinion of the court as to dying declarations in that case ought not to be authority but Judge Keith's concurring opinion should be the rule in this

State. As Judge Keith says very properly: "If a man who has received a wound believes that wound to be mortal and that he will shortly die of it his declaration is admissible and I know of no way in which his mental attitude can be ascertained except by what the declarant may say of it."

As we say, there is but one dissenting opinion in the whole book—Buchanan and Whittle, JJ., in Jeter *v.* Vinton-Roanoke Water Company—and we must say that although this dissenting opinion, is necessarily not the law, as a matter of fact it seems to us it ought to be. Take it altogether the decision of the majority of the court in that case lays down a rather dangerous proposition of law. The Vinton-Roanoke Water Company was chartered to furnish water and light to the little town of Vinton and to "such persons, partnerships and corporations residing or doing business therein and in the neighborhood thereof as may desire to use either the water or light, or both." Under this charter the court held that the company was authorized to extend its system to a city of forty thousand inhabitants two miles away from the little town, and in order to supply customers in that city had the right to condemn additional water not otherwise needed for its purpose. We feel constrained to say with the judges who dissented that "It is inconceivable that the Legislature could have intended by the use of the word 'neighborhood' as employed in this charter to include the city of Roanoke, or that a water company chartered to supply the little town of Vinton and persons, etc., in its neighborhood, could be compelled to furnish water to the thirty or forty thousand persons residing and doing business in that city."

Meeting of the American Bar Association at Montreal.

Never we believe in the history of this country has there been a more remarkable gathering of distinguished men from two hemispheres than at the meeting of the American Bar Association at Montreal on September 1st, 2nd, and 3rd. The Lord High Chancellor of England, the Chief Justice of the United States, the Premier of Canada, M. Labori, the distin-

guished French advocate, met with ex-President Taft, ex-Secretary of State and present United States Senator Root, not to speak of many other distinguished men from the United States and Canada.

Lord Haldane's address was a dignified one, his subject being "Higher Nationality, a Study in Law and Ethics." We cannot say, as has been said, that this address was one of the most "able and original addresses" ever delivered. It was excellent, well-conceived, carefully thought out. Some of the papers spoke of it as "academic, philosophical and profound." Philosophical it certainly was, academic to a certain degree, but we are rather inclined to think that had it been delivered by any other than the famous Lord High Chancellor of England it would not have attracted very wide-spread attention. We do not mean to say that it was not an excellent, aye in some respects a great paper, but we would not class it very much above addresses which we have read made by Senator Root and other distinguished Americans.

In the course of his address the Lord High Chancellor said the United States, Canada and Great Britain together formed a unique group because of the common inheritance of traditions, surroundings and ideals, and particularly in the region of jurisprudence. He declared that lawyers were called on to mould opinion and encourage the nations of this group to develop and recognize a reliable character in the obligations they assumed toward each other. He considered that there were relations possible within such a group that were not possible for nations more isolated and lacking identity of history and spirit. Canada, Great Britain and the United States, with common language, common interests, common ends he described as resembling a single society, which might develop a foundation for international faith of a kind new in the history of the world. The Lord Chancellor urged lawyers to assist in the freshening of the conventional atmosphere which surrounded men in public life by omitting no opportunity to think rightfully, and to contribute to the fashioning of a more hopeful and resolute kind of public opinion. It was the chance of laying before the audience at the Ameriean Bar Association at Montreal this thought that induced him, he said, to obtain permission from King George to attend the meeting.

He dwelt at some length upon the difference between formulated law, whether civil or criminal; the moral rules enjoined by private conscience and the spirit of the community for which the English had no name, but which the Germans called "Sittlichkeit," and which he defined as the system of habitual or customary conduct, ethical rather than legal, embracing all those obligations of the citizen that it was "bad form" or "not the thing" to disregard, the social penalty for which was being "cut" or looked on askance. He pointed out that without such restraint there could be no tolerable social life, and that it was this instinctive sense of what to do and what not to do in daily life and behavior that was the source of liberty and ease, and that this instinctive sense of obligation was the chief foundation of society. He described "Sittlichkeit" as "those principles of conduct which regulate people in their relations to each other, and which have become matters of habit and second nature at the stage of culture reached, and of which, therefore, we are not explicitly conscious." After calling attention to the moral organism of the community which is actuated by the general ethical will, he distinguished this general will from the will of a mob, which he characterized as a mere aggregation of voices. He pointed out that in time of crises history abounded with illustrations of the general will rising to heights of which few individual citizens had ever before been conscious.

Enlarging on this idea, Lord Haldane advocated the development of a full international "Sittlichkeit" or ethical habit among nations, as well as within nations. He recognized that its development was more hopeful in the case of nations with some special relation than within a mere aggregate of nations. In this connection he said that recent events in Europe and the way in which the great powers had worked together to preserve the peace of Europe, as if forming one community, pointed to the ethical possibilities of the group system as deserving of close study by both statesmen and students.

Lord Haldane pointed to the century of peace which had existed between the United States and the people of Canada and Great Britain, during which the peoples of these countries, he said, had come to a greater possession of common ends and ideals

natural to the Anglo Saxon group. The binding quality of this international "Sittlichkeit," he declared, resulted in the fact that a vast number of citizens would not today count it decent to violate the obligations which that feeling suggested.

He advocated the settlement of differences between these three countries in the spirit and in the manner in which citizens settled their differences, and in this connection said it was a splendid example to the world that Canada and the United States should have nearly four thousand miles of frontier practically unfortified.

The Lord Chancellor dwelt on the special responsibility of lawyers for the preservation of the future relations of friendship between the United States, Canada and Great Britain, owing to the large part they played in public affairs and in influencing their fellow men in questions far beyond the province of law, and urged them to extend in the relations of society that "Sittlichkeit" of which he spoke. In this connection he added:

"I believe that if, in the language of yet another President, in the famous words of Lincoln, we as a body in our minds and hearts 'highly resolve' to work for the general recognition by society of the binding character of international duties and rights as they arise within the Anglo-Saxon group, we shall not resolve in vain."

The New Obligation upon Lawyers.

And apropos of Lord Haldane's address, the distinguished gentleman made the following quotation from an address of President Woodrow Wilson's: "The country must find lawyers of the right sort and the old spirit to advise it, or it must stumble through a very chaos of blind experiment. It never needed lawyers who are also statesmen more than it needs them now; needs them in its courts, in its Legislatures, in its seats of executive authority; lawyers who can think in the terms of society itself."

Are the members of the profession fully alive to the obligation which the present unrest in the world of law and politics is imposing upon them? We may close our ears to the loud call for reform in law, in legal procedure, in judicial methods, but we

cannot still it. It may seem but a slight breeze now, this wind of public opinion which is blowing from every quarter; but it may prove a hurricane before whose blast the ships of law and justice may be driven upon the rocks if we do not take the helm and try to steer into the haven where we would be. Left to ignorant or corrupt or over-zealous pilots no one can tell the harm which may not be done, if the wiser members of the legal profession do not awake to their responsibilities.

Here in Virginia we are drifting along, passing now and then an act which is emasculated before it reaches a final vote. The last General Assembly had before it an excellent act simplifying legal procedure in actions in tort. Before it became a law corporations were exempted from its provisions. The shrewd corporation attorneys hoodwinked somebody. Why should a corporation be immune from the effect of a notice any more than an individual? And yet they were made so by this act and not a Legislator noticed it, or if he did, called attention to it. It was an unwise thing, no matter who did it; for when it is fully known it will arouse additional antagonism and a cry of discrimination. Lawyers must "sit up and take notice," to use the slang expression.

Our leading men ought to go to work not only to help draft wise legislation but to mould public opinion in the right way; to meet the accusation of being of those who "darken wisdom with words," by throwing light upon all the dark places and by leading in the fight for wise reform, rather than follow in the path of the demagogue or ignorant though well meaning reformer.

The Report on Legal Reform at the Last Virginia State Bar Association.

We commend most earnestly to the attention of our readers this valuable report made to the last meeting of the Virginia State Bar Association by the committee headed by Thos. W. Shelton, Esq., and published in our September number. And yet we do not believe the plan outlined feasible. Our Supreme Court is a hard worked body It is hardly just to impose upon them—and that without any compen-

sation—the brain-racking and arduous labor of devising a new system of legal procedure in this State. Why not borrow an idea from the method which relieved that court from the examinations for admittance to the Bar. Let the court select—say five lawyers in the State to draft a new system. Let these lawyers be paid a fair compensation, and after they have done their work, let it be submitted to the Supreme Court for amendment, if necessary, and then for adoption as the Rules for Practice and Pleading in this State. We would re-draft the committee's bill as follows:

"Be it enacted by the General Assembly of the State of Virginia that § 3112 of the Virginia Code of 1904, known as Pollard's Code, be amended and re-enacted as follows: The Supreme Court of Appeals shall select five members of the Virginia State Bar who shall draw up forms of writs and make general regulations for the practice of all the courts and prepare a system of rules of practice and a system of pleading and the forms of process to be used in all the courts of this State; and when the same are prepared the said five lawyers shall make report to the Supreme Court of Appeals, who shall carefully examine, and, if they see fit, amend or alter, the same. And after their examination, amendment, and correction, if any amendment or correction is made, they shall thereupon put into effect the said form of writs, regulations for practice of all the courts, system of rules of practice and system of pleadings and forms of process as prepared by said five lawyers and as amended and corrected by the said Court, in case the said Court shall make any amendments or corrections. The said report, with any such amendments or corrections, of any such there be, shall be returned by the Supreme Court of Appeals to the Clerk of the House of Delegates and be published in the Acts of the current session of the Legislature then in session or in the session immediately after the return of said report by the said Supreme Court to the said Clerk of the House of Del egates. And from the time said report is thus published in the said session acts the said form of writs, general regulations for practice of all the courts, the system of rules of practice and system of pleadings and forms of process shall be used in all the courts of this Commonwealth. The said lawyers thus selected by said Supreme Court shall on the completion of their report and the return of the same to said Court be paid out of any money in the Treasury not other-

wise appropriated the sum of ——— each, said sum to be paid by the State Treasurer upon the certificate of the President of the Supreme Court of Appeals, directed to the Auditor of Public Accounts.

All provisions of law in conflict with any of the provisions contained in said report or with the rules of practice and procedure thus reported by said Supreme Court are hereby repealed.

White Slave Act.

Inasmuch as we have endeavored during these long summer months to keep up the interest of our readers though the courts were "in vacation," and decisions scarce, we ask indulgence if, in a moment of relaxation, we turn our attention to the so-called Mann White Slave Law, which has not as yet received much consideration from the Law Register. The slit skirt, September Morn and other "sich" frivolous matters that have recently figured in the courts will be taken up in due course. But to return to the "White Slave Traffic Act," a monstrous defect looms up in the very beginning, namely, its title. Not only is this a misnomer, but it is also inaccurate and misleading, and Diggs and Caminetti with much show of reason might have said in reply to the indictment against them, "I am not a white slaver and I will not plead guilty to such a charge." The opening description of the act in which its purpose is declared to prohibit the transportation for immoral purposes of women and girls is very different from the absurd final section declaring that the act shall be known and referred to as the White Slave Traffic Act. Unless Mr. Mann intended this act to be confined to cases of enslavement for profit, as we strongly opine he did and which the debates of Congress indicate as the intention of its framers, he is to blame for giving it any such title. But whatever may have been the intention of the law makers, it is certain that the courts have given this act a much wider meaning and the details of the Athanasaw case ought to be generally known. Good men and women ought to know what powers the United States government has arrogated to itself, and the other kind of men and women would do well to ponder the risks they run. The case of Louis Athanasaw was taken to the Federal Supreme Court and

the comprehensive meaning given to it by that high tribunal goes beyond the most sanguine expectations of the modern reformers. These are the facts: A girl in Atlanta, Georgia, saw an advertisement for chorus girls. She applied and was taken on at a salary of $20 a week with board and room in the theatre. She was sent from Georgia to Florida, and at lunch on the first day after her arrival in Florida she testified that there was "smoking, cursing and such language that I couldn't eat." In the afternoon Athanasaw, the manager, came to her room and made improper proposals to her. At night she was required to go into the "boxes" and here again she found "smoking, drinking and cursing." Upon these facts the defendant was found guilty and sentenced to six months imprisonment. And the jury could hardly have done otherwise under the following instruction, approved by the Supreme Court: "The question here is of intent; what was the intent with which the defendant brought her here? That she should live an honest, moral and proper life? Or that she came and they engaged and contracted with her *for the purpose of her entering upon a condition which might be termed debauchery or might lead to a condition of debauchery.*"

In other words, a man is guilty under this act if he places a girl *in conditions which might eventually lead her* into immoral conduct, provided he crosses a state line to do it and has the full intention of his acts. Not only must he refrain from debauching the girl himself, but he must not even *lead her into temptation,* so it is not to be wondered at that the court declared the act to have a "more comprehensive prohibition" than that which we call "white slavery." Far be it from us to derogate from the beneficial results that will ensue from this interpretation, for we are heartily in favor of throwing all safeguards around defenseless women and preventing their exploitation for the passions or profit of men, yet we would also call to mind the words of that courageous judge, the late Mr. Justice Harlan, in his dissenting opinion in the Standard Oil Case, in which he urged the importance of sticking to the letter of the law and avoiding judicial legislation. This so-called "White Slave Traffic Act" was passed to prevent the carrying of women from one state or country to another state or country *for profit* and in all other cases he must

have *paid or furnished the transportation.* The debates of Congress will show this, and the Supreme Court has said that they may be looked to ascertain the history of the times when the statute was passed. The English White Slave Act is really such, and is only aimed at the man who entraps and holds or sells a girl and makes a profit out of her. The reformer has grown exceedingly intemperate and we would warn him against himself lest by his own zeal he brings about an equally violent reaction. Intemperance in reform is as little to be desired as intemperance in food and dress, and is fraught with vastly more danger to the republic.

F. M.